SUPREME COURT OF THE UNITED STATES.

No. 12.

MERIT MARTIN ET AL. PLAINTIFFS IN ERROR,

vs.

LESSEE OF WM. C. H. WADDELL.

ERROR TO THE CIRCUIT COURT UNITED STATES FOR NEW JERSEY.

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S. D Langtree, Print.

UNITED STATES OF AMERICA, *ss.*

To John Dem, greeting:

You are hereby cited and admonished, to be and appear at a Supreme Court of the United States, to be holden at Washington, on the fourteenth day of January next, pursuant to a writ of error filed in the clerk's office of the third circuit court of the United States, for the district of New Jersey, wherein Merit Martin, Abraham Webb, Smith Martin, Abraham Bloodgood, Solomon Russ, Joseph W. Reckless, and Lawrence Kearney, are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this sixth [L. S.] day of August, in the year of our Lord one thousand eight hundred and thirty-eight.

W. ROSSELL,
One of the Judges of the third circuit court of the United States, in and for the New Jersey District.

UNITED STATES, SUPREME COURT.

MERIT MARTIN, ABRAHAM WEBB, SMITH MARTIN, et al.
vs.
JOHN DEM. EX. DEM. WM. C. H. WADDELL.
} Citation on Writ of Error.

Ret'ble Jan'y 22d, A. D. 1838.

I do hereby acknowledge the service of this writ, on Wm. C. H. Waddell, the lessee of the defendant in error.

J. W. WILLIAMSON,
Att'y. for the Def't in Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the Judges of the third circuit court of the United States, for the New Jersey district, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said circuit court before you, between John Den, a citizen of the State of New York, plaintiff, and

Merit Martin, Abraham Webb, Smith Martin, Abraham Bloodgood, Solomon Russ, Joseph W. Reckless, and Lawrence Kearney, citizens of the State of New Jersey, defendants, a manifest error hath happened to the great damage of the said Merit Martin, Abraham Webb, Smith Martin, Abraham Bloodgood, Solomon Russ, Joseph W. Reckless, and Lawrence Kearney, as by their complaint appears; and we being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the fourteenth day of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this sixth day of August, in the year of our Lord one thousand eight hundred and thirty-eight, and of the Independence of the United States, the sixty-third.

[L. S.]

ROB'T D. SPENCER,
Clerk.

SUPREME COURT, UNITED STATES.

MERIT MARTIN, ABRAHAM WEBB, SMITH MARTIN, et al.
vs.
JOHN DEN. EX. DEM. WILLIAM C. H. WADDELL.

} Writ of Error.

Ret'ble Jan'y 14th, A. D. 1839.

I allow this writ, let it be sealed.

W. ROSSELL,
Judge of the Circuit Court, of New Jersey District.

The answer of William Rossell, one of the Judges of the circuit court of the United States, for the third circuit, and New Jersey district, within named.

The record and proceedings of the plaint, whereof mention is within made, with all things touching the same, to the Justices of the Supreme Court of the United States, with my proper hands, I have produced in a certain record to this writ annexed, as I am within commanded.

W. ROSSELL.

Pleas before the Judges of the third circuit court of the United States in and for the district of New Jersey, of the term of October, in the year of our Lord one thousand eight hundred and thirty-five.

PENNINGTON, *Clerk.*

DISTRICT OF NEW JERSEY, *ss.*

John Den puts in his place, Isaac H. Williamson, his attorney, against Merit Martin, Abraham Webb, Smith Martin, Abraham Bloodgood, Solomon Russ, Joseph W. Reckless, and Lawrence Kearney, in a plea of tresspass and ejectment.

DISTRICT OF NEW JERSEY, *ss.*

Merit Martin, Abraham Webb, Smith Martin, Abraham Bloodgood, Solomon Russ, Joseph W. Reckless, and Lawrence Kearney, put in their place, John Moore White, their attorney, at the suit of John Den, in a plea of tresspass and ejectment.

DISTRICT OF NEW JERSEY, *ss.*

Be it remembered, that heretofore, to wit, on the first day of April, in the term of April, in this same year, before the judges of the third circuit court of the United States, held at Trenton, in and for the district of New Jersey, comes John Den, a citizen of the State of New York, by Isaac H. Williamson, his attorney, and then and there brings into court his certain bill against Merit Martin, Abraham Webb, Smith Martin, Abraham Bloodgood, Solomon Russ, Joseph W. Reckless, and Lawrence Kearney, citizens of the State of New Jersey, being in custody, &c., in a plea of tresspass and ejectment, and there are pledges for the prosecution thereof, to wit, John Doe and Richard Roe, which said bill follows in there words, to wit:

DISTRICT OF NEW JERSEY, *ss.*

John Den, a citizen of the State of New York, complains of Merit Martin, Abraham Webb, Smith Martin, Abraham Bloodgood, Solomon Russ, Joseph W. Reckless, and Lawrence Kearney, citizens of the State of New Jersey, being in custody, &c. For that whereas, William C. H. Waddell, a citizen of the State of New York, on the first day of January, in the year of our Lord one thousand eight hundred and thirty-five, at the township of Perth Amboy, in the county of Middlesex, in the district of New Jersey, aforesaid, had demised, granted, and to farm, let, to the said John Denn, a citizen of the State of New York, one hundred acres of arable land, one hundred acres of meadow land, one hundred acres of pasture land, one hundred acres of land covered with water, and one hundred acres of other land, with the appurtenances, situate in the township of Perth Amboy, aforesaid, in the county and district aforesaid; to have and to

hold the said tenements, with the appurtenances, to the said John Den, and his assigns from thenceforth, for and during and unto the full end and term of fourteen years, from thence next ensuing; and fully to be completed and ended. By virtue of which said demise, the said John Den entered into the said tenements, with the appurtenances, and became and was thereof possessed for the said term, so to him thereof granted as aforesaid. And the said John Den being so thereof possessed, the said Merit Martin, Abraham Webb, Smith Martin, Abraham Bloodgood, Solomon Russ, Joseph W. Reckless, and Lawrence Kearney, afterwards, to wit, on the second day of January, in the year last aforesaid, with force and arms, &c., entered in the tenements with the appurtenances, in which the said John Den was so interested in manner, and for the term aforesaid, which is not yet expired, and ejected him, the said John Den, from his said farm; and other wrongs to the said John Den, then and there did, to the great damage of the said John Den, and against the peace of the United States, and to the damage of the said John Den, three thousand dollars, and therefore he brings suit, &c.

And the said Merit Martin, Abraham Webb, Smith Martin, Abraham Bloodgood, Solomon Russ, Joseph W. Reckless, and Lawrence Kearney, by John Moore White, their attorney, came and defend the force and injury, when, &c., and say that they are not guilty of the said supposed tresspass and ejectment, above laid to their charge, or of any part thereof, in manner and form as the said John Den hath above thereof complained against them, and of this they put themselves upon the country.

And the said John Den doth so likewise, &c.

Therefore, let a jury thereupon come before the judges aforesaid, at Trenton aforesaid, on the first day of April, in the year of our Lord one thousand eight hundred and thirty-seven, (until which day the issue aforesaid, and between the parties aforesaid, of the plea aforesaid, was continued from term to term, by an award of a writ of *venire facias*, in due form of law and vice, *comes non misit breve*,) by whom, &c., and who neither, &c., to recognize, &c., because as well, &c., and the same day is given to the parties aforesaid, at the same place. At which day before the judges aforesaid, at Trenton aforesaid, come the parties aforesaid, by their attornies aforesaid, and the jurors of that jury, whereof mention is within made, being called, likewise come, who being elected, tried and sworn, to declare the truth of the issue within contained, upon their oaths say, that on the twelfth day of March, in the year of our Lord one thousand six hundred and sixty-four, certain letters patent, duly executed, were granted by Charles the Second, then King of England, to James, Duke of York, in the words following, to wit:

Charles the Second, by the Grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith, &c.

To all to whom these presents shall come, greeting:

Know ye, that we, for divers good causes and considerations, us thereunto moving, have of our special grace, certain knowledge, and mere motion, given and granted, and by these presents, for us, our heirs and successors, do give and grant unto our dearest brother, James, Duke of York, his heirs and assigns, all that part of the main land of New England, beginning at a certain place called or known by the name of St. Croix, next adjoining to New Scotland, in America; and thence extending along the seacoast, unto a certain place called Petuaquine, or Pemaquid, and so up the river thereof, to the farthest head of the same, as it tendeth northward; and extending from thence to the river of Kennebeque, and so upwards by the shortest course to the river of Canada northward; and also all that island or islands, commonly called by the several name or names of Matowacks or Long Island, situate, lying and being towards the west of Cape Cod, and the Narrow Higansetts, abutting upon the main land between the two rivers there, called or known by the several names of Connecticut or Hudson rivers; together also with the said river called Hudson river, and the lands from the west side of Connecticut to the east side of Delaware bay. And also all those several islands called or known by the names of Martins Vineyard and Nantucks, or otherwise Nantuckett, (whereof the tenements aforesaid, with the appurtenances in the declaration aforesaid mentioned are parcel;) together with all the lands, islands, soils, rivers, harbors, mines, minerals, quarries, woods, marshes, waters, lakes, fishings, hawkings, huntings, and fowlings, and all other royalties, profits, commodities and hereditaments to said several islands, lands, and premises belonging and appertaining, with their and every of their appurtenances, and all our estate, right, title, interest, benefit, advantage, claim and demand, of, in, or to the said lands and premises, or any part or parcel thereof, and the reversion and reversions, remainder and remainders, together with the yearly and other the rents, revenues and profits of all and singular the said premises, and of every part and parcel thereof, to have and to hold all and singular the said lands, islands, hereditaments, and premises, with their, and every of their appurtenances, hereby given and granted, or hereinbefore mentioned, to be given and granted unto our dearest brother James, Duke of York, his heirs and assigns forever; to be holden of us, our heirs and successors, as of our manor of East Greenwich, in our county of Kent, in free and common soccage, and not in capitie, nor by knight service, yielding and rendering. And the same James, Duke of York, doth for himself, his heirs and assigns, covenant and promise to yield and render unto our heirs and successors, of and for the same, yearly and every year, forty beaver skins, when they shall be demanded, or within ninety days after. And we do further of our special grace, certain knowledge, and mere motions, for us, our heirs and successors, give and grant unto our said dearest brother James, Duke of York, his heirs, deputies, agents, commissioners and

assigns, by these presents, full and absolute power and authority to correct, punish, pardon, govern, and rule all such the subjects of us, our heirs and successors, as shall from time to time adventure themselves into any the parts or places aforesaid, or that shall or do at any time hereafter inhabit within the same, according to such laws, orders, ordinances, directions and instruments, as by our said dearest brother or his assign, shall be established, and in defect thereof, in case of necessity, according to the good discretions of his deputies, commissioners, officers or assigns respectively; as well in all causes and matters capital and criminal, as civil, both marine and others, so always as the said statutes, ordinances and proceedings, be not contrary to, but as near as conveniently may be, agreeable to the laws, statutes and government of this our realm of England; and saving and reserving to us, our heirs and successors, the receiving, hearing, and determining of the appeal and appeals of all or any person or persons of, in, or belonging to the territories or islands aforesaid, in or touching any judgement or sentence to be there made or given. And further, that it shall and may be lawful, to and for our said dearest brother, his heirs and assigns, by these presents, from time to time, to nominate, make, constitute, ordain, and confirm by such name or names, stile or stiles as to him or them shall seem good, and likewise to revoke, discharge, change and alter, as well all and singular, the governors, officers and ministers, which hereafter shall be by him or them thought fit and needful to be made or used within the aforesaid parts and islands; and also to make, ordain and establish all manner of orders, laws, directions, instructions, forms and ceremonies of government and magistracy, fit and necessary for and concerning the government of the territories and islands aforesaid, so always that the same be not contrary to the laws and statutes of this our realm of England, but as near as may be agreeable thereunto, and the same at all times hereafter to put in execution, or abrogate, revoke, or change, not only within the precincts of the said territories or islands, but also upon the seas, in going and coming to and from the same, as he or they in their good discretion shall think to be fittest for the good of the adventurers and inhabitants there; and we do further, of our own special grace, certain knowledge, and mere motions, grant, ordain, and declare that such governors, officers and ministers, as from time to time shall be authorized and appointed in manner and form aforesaid, shall and may have full power and authority to use and exercise martial law, in cases of rebellion, insurrection, and mutiny, in as large and ample a manner as our lieutenants in our counties within our realm of England have or ought to have, by force of their commission of lieutenancy, or any law or statute of this our realm; and we do further, by these presents, for us, our heirs and successors, grant unto our said dearest brother James, Duke of York, his heirs and assigns, that it shall and may be lawful to and for the said James, Duke of York, his heirs and assigns, in his or their discretion, from time to time, to admit such and so many person or persons to trade and traffic unto and within the said

territories and islands aforesaid, and into every or any part or parcel thereof, and to have, possess and enjoy any lands or hereditaments in the parts and places aforesaid, as they shall think fit, according to the laws, orders, constitutions, and ordinances by our said brother, his heirs, deputies, commissioners, and assigns, from time to time to be made and established by virtue of, and according to the true interest and meaning of these presents; and under such conditions, reservations, and agreements as our said brother, his heirs or assigns, shall set down, order, direct and appoint, and not otherwise, as aforesaid; and we do further of our special grace, certain knowledge, and mere motion, for us our heirs and successors, give and grant unto our said dearest brother, his heirs and assigns, by these presents, that it shall and may be lawful to and for him, them, or any of them at all, and every time and times hereafter, out of any of our realms or dominions whatsoever, to take, lead, carry, and transport in and into their voyages, and for and towards the plantations of our said territories and islands, all such and so many of our loving subjects, or any other strangers being not prohibited or under restraint, that will become our loving subjects, and live under our allegiance, as shall willingly accompany them in the said voyages; together with all such clothing, implements, furniture, and other things usually transported, and not prohibited, as shall be necessary for the inhabitants of the said islands and territories, and for their use and defence thereof, and managing and carrying on the trade with the people there; and in passing and returning to and fro, yielding and paying to us, our heirs and successors, the customs and duties, due and payable, according to the laws and customs of this realm.

And we also, for us, our heirs and successors, grant to our said dearest brother James, Duke of York, his heirs and assigns, and to all and every such governor or governors, or other officers or ministers as by our said dear brother, his heirs or assigns, shall be appointed, to have power and authority of government and command in or over the inhabitants of the said territories or islands, that they and every of them, shall and lawfully may from time to time, and all times hereafter, forever, for their several defence and safety, encounter, expulse, repel, and resist, by force of arms, as well by sea as by land, and all ways and means whatsoever, all such person and persons, as without the special license of our said dearest brother, his heirs or assigns, shall attempt to inhabit within the several precincts and limits of our said territories and islands, and also all and every such person and persons whatsoever, as shall enterprise or attempt at any time hereafter, the destruction, invasion, detriment, or annoyance to the parts, places, or islands aforesaid, or any part thereof; and lastly, our will and pleasure is, and we do hereby declare and grant, that these our letters patent, or the enrolment thereof, shall be good and effectual in the law, to all intents and purposes whatsoever, notwithstanding the not reciting or

mentioning of the premises or any part thereof, or the metes or bounds thereof, or of any former or other letters patent or grants heretofore made or granted of the premises, or of any part thereof, by us or of any of our progenitors, unto any other person or persons whatsoever, bodies politick or corporate, or any act, law, or other restraint, incertainty, or imperfection whatsoever, to the contrary in anywise notwithstanding; altho' express mention of the true yearly value or certainty of the premises, or any of them, or of any other gifts or grants by us, or by any of our progenitors or predecessors heretofore made, to the said James, Duke of York, in these presents is not made, or any statute, act, ordinance, provision, proclamation, or restriction heretofore had, made, enacted, ordained, or provided, or any other matter, cause, or thing whatsoever, to the contrary thereof in anywise notwithstanding.

In witness whereof, we have caused these our letters to be made patent. Witness ourself at Westminster, the twelfth day of March, in the sixteenth year of our reign.

By the King: HOWARD.

And the same jurors on their oath aforesaid, further say, that the said James, Duke of York, afterwards, to wit, on the twenty-third day of June, in the year of our Lord one thousand six hundred and sixty-four, by a certain indenture made between him, the said James, Duke of York, of the one part, and John, Lord Berkley, and Sir George Carteret, of the other part, bearing date the same day and year last aforesaid, for and in consideration of a competent sum of money, did demise to the said John, Lord Berkley, and Sir George Carteret, all that tract of land adjacent to New England, lying and being to the westward of Long Island, and Manhitas Island, and bounded on the east, part by the main sea and part by Hudson's river, having upon the west Delaware bay or river, and extending southward to the main ocean as far as Cape May, at the mouth of Delaware bay, and to the northward as far as the northernmost branch of the said bay or river of Delaware, which is in forty-one degrees and forty minutes of latitude, and crossing over thence in a straight line to Hudson's river, in forty-one degrees of latitude; which said tract of land so as aforesaid demised, was by the terms of the said indenture, thereafter to be called New Cæsaræa or New Jersey, and was a portion and part of the said tract of land, so as aforesaid granted by the said Charles the Second to the said James, Duke of York, and of which said tract so as aforesaid demised, the tenants aforesaid, with the appurtenances in the declaration aforesaid mentioned, are parcel. To have and to hold to the said John, Lord Berkley, and Sir George Carteret, from the day next before the day of the date of the said indenture for one whole year thence next ensuing. By virtue whereof, the said John, Lord Berkley, and Sir George Carteret, into the tenements so as aforesaid demised with the appurtenances entered, and were possessed thereof, for the term aforesaid, and being so thereof possessed, afterwards, to

wit, on the twenty-fourth day of the same month of June, in the year last aforesaid, by a certain indenture made between the said James, Duke of York, of the one part, and the said John, Lord Berkley, and Sir George Carteret of the other part, bearing date the same day and year last aforesaid, for and in consideration of a competent sum of good and lawful money of England, to the said James, Duke of York, paid by the said John, Lord Berkley, and the said Sir George Carteret, he, the said James, Duke of York, granted, bargained, sold, leased, and confirmed to the said John, Lord Berkley and Sir George Carteret, and to their heirs and assigns forever, they then being in their actual possession, the tenements last aforesaid, with the appurtenances, so as aforesaid, to be called New Cæsaræa or New Jersey, and also, all rivers, mines, minerals, woods, fishings, hawkings, huntings and fowlings, and all other royalties, profits, commodities and hereditaments whatsoever, to the said land and premises belonging, or in any wise appertaining, with their and every of their appurtenances, in as full and ample a manner as the same were granted to the said James, Duke of York, by the before recited letters patent, to have and to hold the tenements last aforesaid, with the appurtenances and every of them, unto the said John, Lord Berkley, and Sir George Carteret, their heirs and assigns forever.

And the same jurors on their oath aforesaid, further say, that afterwards, to wit, on the twenty-ninth day of June, in the year of our Lord one thousand six hundred and seventy-four, the said Charles the Second, did grant unto the said James, Duke of York, certain other letters patent, in the precise words of the letters patent above recited, and that the said James, Duke of York, afterwards, to wit, on the twenty-eighth day of July, in the year last aforesaid, by a certain indenture, made between him, the said James, Duke of York, of the one part, and Sir George Carteret of the other part, bearing date the same day and year last aforesaid, for and in consideration of a competent sum of money, did demise to the said Sir George Carteret all that tract of land adjacent to New England, lying and being to the westward of Long Island and Manhitas Island, and bounded on the east, part by the main sea, and part by Hudson's river, extending southward as far as a certain creek, called Barnagat, being about the middle between Sandy Point and Cape May, and bounded on the west, in a straight line from said creek, called Barnagat, to a certain creek in Delaware river, called Renkokus Kill, and thence up the said Delaware river, to the northernmost branch thereof in latitude forty-one degrees and forty minutes, and on the north, crossing over in a straight line to Hudson's river, in forty-one degrees of latitude (of which said tract of land and premises last mentioned and demised, the tenements aforesaid, with the appurtenances in the declaration aforesaid mentioned are parcel,) to have and to hold, to the said Sir George Carteret from the day next, before the day of the date of the said last mentioned indenture for one whole year, thence next ensuing. By virtue whereof, the said Sir George Carteret, into the said tenements so demised as last aforesaid with the appurtenances, entered

and was possessed thereof for the term last aforesaid, and being so thereof possessed, afterwards, to wit, on the twenty-ninth day of July, in the year last aforesaid, by a certain other indenture made between him, the said James, Duke of York, of the one part and the said Sir George Carteret of the other part, bearing date the same day and year, for and in consideration of a sum of good and lawful money paid to the said James, Duke of York, by the said Sir George Carteret, he, the said James, Duke of York, granted, bargained, sold, released, and confirmed to the said Sir George Carteret, and to his heirs and assigns forever, they then being in his actual possession, the tenements last aforesaid, with the appurtenances, together with all mines, minerals, woods, rivers, fishings, hawkings, huntings, and fowlings, and all the royalties, profits, commodities and heriditaments whatsoever, to the said last mentioned tenements belonging, or in anywise appertaining: with their and every of their appurtenances, in as full and ample a manner as the same were granted to the said James, Duke of York, by the before recited letters patent; to have and to hold the tenements last aforesaid, with the appurtenances, and every of them unto the said Sir George Carteret, his heirs and assigns forever. And the same jurors on their oath aforesaid, further say, that previous to the execution of the said last mentioned letters patent, and of the said several herein before mentioned indentures following the same, to wit, on the thirteenth day of June, in the year of our Lord one thousand six hundred and seventy-four, by a certan proclamation published and promulged on the same day and year last aforesaid, by the said Charles the Second, he the said Charles the Second did command and charge all persons whatsoever, inhabiting the said province of New Cæsaræa or New Jersey, whereof the tenements aforesaid, with the appurtenances in the declaration aforesaid mentioned, are parcel, to yield obedience to the laws and government which were or should be thereafter established in the said province, by the said Sir George Carteret, (who, in the words of the said proclamation, had the sole power under him, the said Charles the Second, to settle and dispose of the said province, upon such terms and conditions as to him the said Sir George Carteret, should appear fit,) upon pain of incurring the high displeasure of the said Charles the Second, and of being proceeded against, according to law.

And the same jurors, on their oath aforesaid, further say, that afterwards, to wit, on the first day of July, in the year of our Lord one thousand six hundred and seventy-six, a certain indenture quintipartete, bearing date the same day and year, was made between the said Sir George Carteret, of the first part, William Penn, of the second part, Gawn Lawry, of the third part, Nicholas Lucas, of the fourth part, and Edward Billinge, of the fifth part; which said indenture, quintipartete, recites, among other indentures and conveyances, an indenture of bargain and sale, bearing date the eighteenth day of March, in the year of our Lord one thousand six hundred and seventy-three, by which said last mentioned indenture, the said John, Lord Berkley, as well for and in consideration of the sum of

one thousand pounds to him in hand paid, as for other the considerations therein mentioned, did grant, bargain, sell, and convey unto John Fenwick, and to his heirs and assigns forever, all that the moiety or half part of him, the said John, Lord Berkley, of and in the said province of New Cæsaræa or New Jersey, with the appurtenances, in as full, ample, and beneficial a manner, to all intents and purposes, as the same was granted and conveyed to him, the said John, Lord Berkley, and Sir George Carteret, by the said Duke of York, to have and to hold to the said John Fenwick and to his heirs and assigns, to the only proper use, benefit, and behoof of the said John Fenwick, his heirs and assigns forever; and the said indenture, quintipartite, also recites two other indentures, the one being an indenture of bargain and sale for the term of one year, bearing date the ninth day of February, in the year of our Lord one thousand six hundred and seventy-four, made between the said John Fenwick and Edward Billinge, of the one part, and the said William Penn, Gawn Lawry, and Nicholas Lucas, of the other part, and the other being an indenture, tripartite, of grant, release, and confirmation, bearing date the tenth day of the same month of February, in the year last aforesaid, and made between the said John Fenwick, of the first part, the said Edward Billinge of the second part, and the said William Penn, Gawn Lawry, and Nicholas Lucas, of the third part, by which two last mentioned indentures, the said moiety, or half part of the said province of New Jersey, and the said moiety or half part of all and singular the said several and respective premises, so conveyed unto the said John Fenwick as aforesaid, with all and every the rights, members, and appurtenances of the same, were conveyed unto the said William Penn, Gawn Lawry, and Nicholas Lucas, their heirs and assigns, to the only proper use of them, their heirs and assigns forever; the said Edward Billinge, however, claiming an equitable interest therein; by means of which said several last mentioned indentures, so as aforesaid recited in the said quintipartite deed, the said William Penn, Gawn Lawry, and Nicholas Lucas, did at the time of the execution of the said indenture, quintipartite stand seized of, and in one undivided moiety, or half part of all and every of the said premises, so granted as aforesaid to the said John, Lord Berkley, and Sir George Carteret, as joint tenants among themselves, and did at the same time hold the same as tenants in common with the said Sir George Carteret; which said Sir George Carteret, at that same time, to wit, the time of the execution of the said indenture quintipartite, was seized of the other undivided moiety, or half part of all and every the same premises.

And the same jurors, on their oath aforesaid, further say, that afterwards, to wit, on the day of the date of the said indenture, quintipartite, the said Sir George Carteret, William Penn, Gawn Lawry, Nicholas Lucas, and Edward Billinge, agreed to make a partition between them of the said province of New Jersey, and of the said several and respective premises, whereof they stood seized as tenants in common as aforesaid, and that is was further agreed by and

between them, that the said Sir George Carteret shouldhave for his share and part of the said province of New Jersey, and of the said several and respective premises, to be holden by him the said Sir George Carteret, his heirs and assigns forever, in severalty, as his lawful and equal part, share, and proportion of the said tract of land, so as aforesaid, called the province of New Jersey, and of all and every the said several and respective premises, to be thenceforth called, known and distinguished as East New Jersey, all that easterly part, share and portion of the said province of New Jersey, lying on the east side and eastward of a straight and direct line drawn through the said premises from north to south, for the dividing and making a partition and separation of the said eastern part, share and portion of the said province of New Jersey, from the westerly part, share and portion thereof; and that in pursuance of the said agreement, and for and in consideration of the sum of five shillings, to them in hand paid by the said Sir George Carteret, they, the said William Penn, Gawn Lawry, Nicholas Lucas, and Edward Billinge, and each and every of them, in and by the said indenture, quintipartite, above mentioned did grant, bargain, release, convey, and confirm unto the said Sir George Carteret, his heirs and assigns forever, all that easterly part, share and portion of the said province of New Jersey, so granted and conveyed by the said Duke of York, to the said Lord Berkley, and Sir George Carteret as aforesaid, extending eastward and northward along the seacoast, and the said river called Hudson's river, from the east side of a certain place or Harbor, lying on the southern part of the said province of New Jersey, and commonly called and known by the name of Little Egg harbour, to that part of the said river, called Hudson's river, which is in forty-one degrees of latitude, being the farthermost part of the said province, which is bounded by the said river, and thence crossing over in a straight line, extending from that part of Hudson's river aforesaid, to the northernmost branch or part of Delaware river, and to the most northerly part, point or boundary of the said province of New Jersey, and extending from the said northernmost point southward, by a straight and direct line drawn through the said province, to the most southerly point of the east side of Little Egg Harbour aforesaid, and all rights, benefits and advantages, and all and every the isles, islands, rivers, mines, minerals, woods, fishings, hawkings, huntings, fowlings, and all other royalties, governments, powers, forts, franchises, harbours, profits, commodities and hereditaments whatsoever, unto the said easterly part of the said province of New Jersey, belonging or in any wise appertaining, with their, and every of their appurtenances; and all the estate, right, title and interest, claim and advantage, whastoever, as well in law as in equity, of the said grantors, and each and every of them, of, in, unto and out of said easterly part of the said province of New Jersey, and of every part and parcel thereof, and the reversion and reversions, remainder and remainders, of the same, and of every part and parcel thereof, and all the rents, duties, services, reserved upon any estates or grants heretofore made by the said Lord

Berkley and Sir George Carteret, or by any persons claiming any estate, interest or authority, from, by, or under either of them, of any part of the said premises thereby conveyed unto the said Sir George Carteret, to have and to hold to the said Sir George Carteret, and to his heirs and assigns in severalty, to the sale and only use of the said Sir George Carteret, his heirs and assigns forever; and that it was further agreed and covenanted in the said indenture, quintipartite, that the part of the said province of New Jersey, therein conveyed to the said Sir George Carteret, should thereafter be known and distinguished by the name of East New Jersey; whereof the tenements aforesaid, with the appurtenances, in the declaration aforesaid mentioned, are parcel.

And the same jurors on their oath aforesaid, further say, that the said Sir George Carteret, being seized of the said tract of land and premises, with the appurtenances, so as aforesaid, called East New Jersey, afterwards, to wit, on the fifth day of December, in the year of our Lord one thousand six hundred and seventy-eight, made his last will in writing, duly executed to pass land and real estate, and by his said last will, devised to Edward, Earl of Sandwick, John, Earl of Bath, Sir Thomas Crew, Sir Robert Atkins, Bernard Greenville, and Edward Atkins, and their heirs, all his aforesaid plantation of East New Jersey, whereof the tenements aforesaid, with the appurtenances in the declaration aforesaid mentioned, are parcel, upon trust and confidence, that they, and the survivor and survivors of them, and the heirs and executors of the survivor, should make sale thereof, and out of the moneys arising from such sale, should pay and discharge the debts and legacies, in the said last will and testament, particularly mentioned.

And the same jurors on their oath aforesaid, further say, that the said Sir George Carteret, afterwards, of such his estate of and in the tenements last aforesaid, with the appurtenances, died, seized. After whose death, to wit, on the fifth and sixth days of March, Anno Domini, one thousand six hundred and seventy-nine, the said trustees, by indenture of lease and release, bearing date, respectively, on the days and in the year last aforesaid, conveyed the said last mentioned tenements with the appurtenances, whereof the tenements aforesaid, with the appurtenances in the declaration aforesaid mentioned, are parcel, to Thomas Cremer and Thomas Pocock; and that afterwards, to wit, on the twentieth day of February, in the year of our Lord one thousand six hundred and eighty-one, the said Earl of Sandwick, by an indenture, under his hand and seal, bearing date on the same day and year, released all his estate, interest and trust in the said tenements with the appurtenances, so as aforesaid, called East New Jersey, to his co-trustees; and that afterwards, to wit, on the first and second days of February, Anno Domini, one thousand six hundred and eighty-two, in pursuance of the trust, raised and created by the said last will and testament of the said Sir George Carteret, the said Earl of Bath, Sir Thomas Crew, Bernard Greenville, Sir Robert Atkins, Edward Atkins, Thomas Cremer, Thomas Pocock, and Eliza-

beth Carteret, the widow and executrix of the said Sir George Carteret, by indentures of lease and release, bearing date respectively on the days and in the year last aforesaid, conveyed the tenements last aforesaid with the appurtenances, whereof the tenements aforesaid, in the declaration aforesaid mentioned, with the appurtenances, are parcel, to William Penn, Robert West, Thomas Rudyard, Samuel Groom, Thomas Hart, Richard Mead, Thomas Wilcox, Ambrose Rigg, John Heywood, Hugh Hartshorn, Clement Plumstead, and Thomas Cooper. To have and to hold to them, and their heirs and assigns forever. And the same jurors on their oath aforesaid, further say, that each of the said last mentioned individuals, who have always been known and distinguished as the twelve proprietors, after agreeing, that there should be no benefit of survivorship among them, afterwards to wit, at sundry times in the year of our Lord one thousand six hundred and eighty-two, by indentures duly executed, bearing date on the days and in the year last aforesaid, conveyed to twelve other individuals; that is to say, each of the twelve proprietors first above mentioned, conveyed separately to each of the twelve last mentioned individuals, one half of his share and estate, of and in the tenements last aforesaid, with the appurtenances, whereof the tenements aforesaid, with the appurtenances, in the declaration aforesaid mentioned, are parcel, thus making twenty-four proprietors, who held the said premises with the appurtenances as tenants in common.

And the same jurors on their oath aforesaid, further say, that the said Duke of York, afterwards, to wit, on the fourteenth day of March, in the year of our Lord one thousand six hundred and eighty-two, by an indenture made between him, the said Duke of York, of the first part, and the said twenty-four proprietors of the second part, bearing date on the day and year last aforesaid, for and in consideration of a competent sum of money, to the said Duke of York paid, and for the better extinguishing of all such claims and demands as the said Duke of York, and his heirs might in anywise have, of, or in the premises, with the appurtenances, called East New Jersey, as aforesaid, whereof the tenements aforesaid, with the appurtenances in the declaration aforesaid mentioned, are parcel, did grant, bargain, sell, release, convey, and confirm unto the said twenty-four proprietors, their heirs and assigns, all the premises, with the appurtenances so as aforesaid, called East New Jersey, and every part and parcel thereof, together with all islands, bays, rivers, waters, forts, mines, minerals, quarries, royalties, franchises, whatsoever, to the same belonging, or in anywise appertaining, and also, the free use of all bays, rivers and waters leading unto, or lying between the said last mentioned premises, or any of them, for free trade, navigation, fishery or otherwise, to have and to hold, to the said twenty-four proprietors, their heirs and assigns forever, to the only proper use and behoof of the said twenty-four proprietors, their heirs and assigns forever. And that the said Duke of York, by the said last mentioned indenture, did also grant, transfer, and assign to the said twenty-four

proprietors and to their heirs and assigns, proprietors of the said province of East New Jersey for the time being, all and every such, and the same powers, authorized jurisdictions, governments and other matters and things whatsoever, which by the said several above recited letters patent, from the said Charles the Second, to the said Duke of York, or either of them, were granted or intended to be granted, to be exercised by the said Duke of York, his heirs or assigns, his or their agents, or officers in or upon the said premises, by the said last mentioned indenture, confirmed or intended to be thereby confirmed, and every of them, to be held, enjoyed, exercised, and executed by the said twenty-four proprietors, their heirs and assigns, proprietors of the said last mentioned premises, for the time being, as fully, amply, to all intents, constructions and proposes as the said Duke of York, or his heirs could or ought to hold, enjoy, use, exercise or execute the same by force and virtue of the said several above recited letters patent or otherwise, howsoever.

And the same jurors on their oath aforesaid, further say, that the said Charles the Second, afterwards to wit, on the twenty-third day of November, in the year of our Lord one thousand six hundred and eighty-three, by a certain instrument of writing, duly executed, bearing date on the same day and year last aforesaid, and reciting the said last mentioned indenture, from the said Duke of York, to the said twenty-four proprietors, did recognise their right to the soil and government of the said province of East New Jersey, whereof the tenements aforesaid, with the appurtenances in the declaration aforesaid are parcel, and did strictly charge and command the planters and inhabitants, and all other persons concerned in the same to submit and yield all due obedience to the laws and government of the said twenty-four proprietors, their heirs and assigns, as absolute proprietors and governors thereof, who in the words of the said instrument in writing, had the sole power and right, derived under the said Duke of York, from him the said Charles the Second, to settle and dispose of the said province of East New Jersey, upon such terms and conditions as to the twenty-four proprietors, their heirs and assigns, should seem meet, as also, to their deputy or deputies, agents, lieutenants and officers lawfully commissioned by them, according to the powers and conditions granted to them.

And the same jurors on their oath aforesaid, further say, that afterwards, to wit, on the fifteenth day of April, in the year of our Lord one thousand seven hundred and two, the said twenty-four proprietors, and the other persons, in whom, by sundry misne conveyances and assurances in the law, the whole estate, right, title and interest in the said province of East New Jersey, were vested at the said last mentioned date as proprietors thereof, by an instrument in writing, under their hands and seals, bearing date the same day and year last aforesaid, did for themselves, and their heirs, surrender and yield up unto Anne, Queen of England, &c., and to her heirs and successors, all the powers and authorities in the said letters patent granted, to correct, furnish pardon, govern and rule all or any

of her said Majesty's subjects or others, who then were as inhabited or thereafter might adventure into or inhabit within the said province of East New Jersey; and also to nominate, make, constitute, ordain and confirm any laws, orders, ordinances, directions and instruments for those purposes or any of them, and to nominate, constitute or appoint, revoke, discharge, change or alter any governor or governors, officers or ministers, which were or should be appointed within the said province, and to make, ordain, and establish, any orders, laws, directions, instruments, forms or ceremonies of government and magistracy, for or concerning the same, or on the sea in going to or coming from the same, or to put in execution or abrogate, revoke or change such as were already made for or concerning such government or any of them; and also all the powers and authorities by the said letters patent granted, to use and exercise martial law in the said province of East New Jersey, and to admit any person or persons to trade or traffic there; and if encountering, repelling and resisting by force of arms, any person or persons, attempting to inhabit there without the license of them, the said proprietors, their heirs and *and* assigns, and all other the powers, authorities and privileges of, and concerning the government of the province last aforesaid, or the inhabitants thereof, which were granted or mentioned to be granted by the said several above recited letters patent, or either of them. And that the same Queen Anne, afterwards, to wit, on the seventeenth day of the same month April, in the year last aforesaid, did accept of the said surrender, of the said powers of government so made by the said proprietors in and over the premises last aforesaid.

And the same jurors on their oath aforesaid, further say, that afterwards to wit, on the twenty-fifth day of November, in the year of our Lord one thousand eight hundred and twenty-four, the Legislature of the State of New Jersey passed an act, by the first section of which, it was enacted that the shore and land covered by the waters of the sound and Raritan river, within the township of Perth Amboy, in the county of Middlesex, and within the eastern division of the said State of New Jersey, (heretofore called the province of East New Jersey as aforesaid,) should and might be set apart and laid out by commissioners, for the purpose of planting and growing oysters thereon, reserving thereout such part or parts thereof, as might be judged necessary for public accommodation: provided, however, that nothing in the said act contained, should authorise the said commissioners to present any obstruction, or cause any injury to the navigation of the said sound and river, or to any fishery or fisheries therein. And that by the second section of the said act, it was enacted that the said commissioners should and might upon the application and at the expense of the owners, of the land lying next to, and adjacent to the waters aforesaid, proceed to make a survey of the said shores and land covered with water, and lay off and set apart as much of the same, as they or a majority of them might deem proper, for the purposes aforesaid.

And that by the third section of the said act, it was enacted, that the said shores and land covered by water, so surveyed and laid off, excepting such part or parts thereof, as should be set apart and designated for public use and accommodation, as aforesaid, should and might be used and occupied by the owner and owners of the land next to, and adjacent to the navigable waters aforesaid, for the purposes of planting and growing oysters thereon, for the use and benefit of such owners respectively, their heirs and assigns, praying therefor a certain yearly rent for the use of the said State of New Jersey. And that by the tenth section of the said act, it was enacted that the said act should remain in force for ten years, and no longer.

And the same jurors on their oath aforesaid, further say, that afterwards, to wit, on the twenty-seventh day of December, in the year last aforesaid, the said Legislature passed a supplement to the said act, above in part recited, by the second section of which said supplement, it was enacted, that the commissioners named in the said act, and the commissioners named in the said supplement should and might upon application of any person or persons, proceed to make a survey of the shores and lands covered by water, according to the true intent and meaning of the said act and supplement, and stake off such part as they might deem expedient, for the purpose of planting and growing oysters thereon; and after reserving a certain portion and amount, in the said supplement specified, for each of the owners of the adjacent shore or shores, any other person or persons might take and stake off under the directions of the said commissioners, for his or her use, a lot within the survey of the said commissioners, the said lot, however, not to exceed a certain amount in the said supplement also specified, the said person or persons paying for the said lot a certain rent each and every year to the said State of New Jersey.

And the same jurors, on their oath aforesaid, further say that, after the passage of the said act and supplement, the said commissioners thereby appointed, surveyed, set apart, and laid off, the said shores and lands covered by water, whereof the tenements aforesaid, with the appurtenances in the declaration aforesaid mentioned, are parcel, for the purposes aforesaid; and that afterwards, to wit, at sundry times between the day of the date of the said supplement and the sixteenth day of May, in the year of our Lord one thousand eight hundred and thirty-one, the said Merit Martin, Abraham Webb, Smith Martin, Abraham Bloodgood, Solomon Russ, Joseph W. Reckless, and Lawrence Kearney, the defendants in the declaration aforesaid mentioned, having complied with the terms, conditions, and provisions of the said act and supplement, did take and stake off, for their own use, under the directions of the said commissioners, from the shores and lands covered by water, surveyed, as aforesaid, certain lots, being the tenements aforesaid, with the appurtenances in the declaration aforesaid mentioned.

And the same jurors, on their oaths aforesaid, further say, that afterwards, to wit, on the twenty-second day of December, in the

year of our Lord one thousand eight hundred and thirty-four, Francis W. Brindley, a deputy surveyor, duly commissioned and sworn, of the said eastern division of the State of New Jersey, heretofore called the Province of East New Jersey, did survey for the said William C. H. Waddell, and for William Van Hook, John S. Blauvelt, Archer Gifford, and John Rutherford, Jr., all that tract of land covered by water, situate on the flats, extending from Perth Amboy, in the township of Perth Amboy, in the county of Middlesex, and eastern division of the State of New Jersey aforesaid, whereof the tenements aforesaid, with the appurtenances in the declaration aforesaid mentioned, are parcel; that the said survey was returned, examined, and approved, and recorded in the office of the surveyor general of the said eastern division of the State of New Jersey; and that the said William C. H. Waddell, William Van Hook, John S. Blauvelt, Archer Gifford, and John Rutherford, Jr., had right to the said tenements, with the appurtenances, so surveyed for them as aforesaid, under and by virtue of a warrant to them, or a majority of them, for five hundred acres, to be located in any part under water, unappropriated in the said eastern division of the State of New Jersey, bearing date on the seventh day of October, in the year of our Lord one thousand eight hundred and thirty-four, and recorded in the office of the said surveyor general.

And the same jurors, on their oath aforesaid, further say, that afterwards, to wit, on the twenty-ninth day of December, in the year last aforesaid, the said William C. H. Waddell, William Van Hook, John S. Blauvelt, Archer Gifford, and John Rutherford, Junior, by an indenture made between the last mentioned persons and James J. Stewart, of the city of New York, bearing date on the day and year last aforesaid, for and in consideration of the sum of ten thousand dollars, did grant, bargain, sell, convey, and confirm, unto the said James Stewart, and to his heirs and assigns forever, the tenements last aforesaid, with the appurtenances, whereof the tenements aforesaid, with the appurtenances in the declaration aforesaid mentioned, are parcel; to have and to hold, unto the James J. Stewart, and to his heirs and assigns forever, to his and their only proper use, benefit, and behoof forever.

And the same jurors, on their oath aforesaid, further say, that the tenements aforesaid, with the appurtenances in the declaration aforesaid mentioned, are situate beneath the waters of the Raritan river and bay, where the tides ebbs and flows; and that the said tenements, with the appurtenances, are of the value of five thousand dollars; and that a certain map, intended to represent the said premises, and given in evidence to the said jurors, is now presented to the judges aforesaid, as a part of this their verdict.

And the same jurors, on their oath aforesaid, further say, that afterwards, to wit, on the day and year last aforesaid, the said James J. Stewart, by an indenture made between the said James J. Stewart and William C. H. Waddell, the lessor of the plaintiff, bearing date on the same day and year, for and in consideration of the sum of ten

thousand dollars, did grant, bargain, sell, convey, and confirm unto the said William C. H. Waddell, and to his heirs and assigns forever, the tenements last aforesaid, with the appurtenances, whereof the tenements aforesaid, with the appurtenances in the declaration aforesaid mentioned, are parcel; to have and to hold, to the said William C. H. Waddell, and to his heirs and assigns forever; by virtue of which said last mentioned indenture, the said William C. H. Waddell, into the tenements aforesaid, with the appurtenances in the declaration aforesaid mentioned, entered, and was thereof possessed; and being so thereof possessed, the said William C. H. Waddell, afterwards, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and thirty-five, in the declaration aforesaid mentioned, demised the tenements last aforesaid, with the appurtenances, to the said John Den; to have and to hold, to the said John Den, and his assigns, from the said first day of January, for and during, and unto the full end and term of fourteen years, thence next ensuing, and fully to be completed and ended; by virtue of which said demise, the said John Den, into the tenements last aforesaid, with the appurtenances, entered and was thereof possessed, until the said Merit Martin, Abraham Webb, Smith Martin, Abraham Bloodgood, Solomon Russ, Joseph W. Reckless, and Lawrence Kearney, afterwards, to wit, on the second day of January, in the last aforesaid year, in the declaration aforesaid mentioned, into the tenements last aforesaid, with the appurtenances, which the said William C. H. Waddell, to the said John Den, in form aforesaid, demise, and for the term aforesaid, which is not yet ended, in and upon the possession of the said John Den, entered; and him, the said John Den, from the tenements with the appurtenances last aforesaid, his term aforesaid, therein not ended, ejected, expelled and amoved, and him, the said John Den, being so thereout ejected, expelled and amoved, from his possession aforesaid, thereof kept out, and yet do keep out, as the said John Den, within, against them therof complains; but whether upon the whole matter aforesaid, by the jurors aforesaid, in form aforesaid, found the said Merit Martin, Abraham Webb, Smith Martin, Abraham Bloodgood, Solomon Russ, Joseph W. Reckless, and Lawrence Kearney, are guilty of the trespass and ejectment in the declaration aforesaid, specified in the tenements aforesaid, with the appurtenances in the declaration aforesaid mentioned, the jurors aforesaid are wholly ignorant; and therefore pray the advice of the judges aforesaid, here. And if upon the whole matter aforesaid, by the jurors aforesaid, in form aforesaid found, it shall seem to the judges that the said Merit Martin, Abraham Webb, Smith Martin, Abraham Bloodgood, Solomon Russ, Joseph W. Reckless, and Lawrence Kearney, are guilty in law of the trespass and ejectment aforesaid, then the jurors aforesaid, say on their oath aforesaid, that the said Merit Martin, Abraham Webb, Smith Martin, Abraham Bloodgood, Solomon Russ, Joseph W. Reckless, and Lawrence Kearney, are thereof guilty, in manner and form, as the said John Den in the declaration aforesaid, thereof complains against them; and in that case assess the damages of the